government of their choice, and a constitution of their own creation. Efforts are making for facilitating internal intercourse by roads and canals; public institutions for the purposes of education and beneficence are protected; agriculture, commerce, and domestic industry are fostered, and begin to manifest the wholesome influences of liberty; the working of the mines is encouraged; and everything, in fine, is done, which, in the present circumstances of the country, a wise and upright government can devise and accomplish, to enable the nation to enjoy the invaluable blessings of independence.

10.—*Strictures on Dr Livingston's System of Penal Laws, prepared for the State of Louisiana.* By SETH LEWIS, Judge of the Fifth District in said State. New Orleans. 1825. 8vo. pp. 67.

As we have not had an opportunity of examining Mr Livingston's Code, so far as it is now published, nor of hearing his answer to the Strictures contained in this pamphlet, it would be unjust, if not impracticable, to form a conclusive opinion against him, on the merits of the controversy. Some of the objections urged by Judge Lewis certainly present a formidable aspect; many are at least plausible; while others strike us, from his own showing, as trivial, and betraying more of captiousness than of candid criticism. There are unquestionably great difficulties in the whole system of codification. Laws, ordinarily speaking, grow up with society, and conform themselves gradually, though tardily to its changes. The demands of society, in our own country at least, it must be confessed, are somewhat in advance of legislative improvement. Rules of conduct, which were well suited to the circumstances of our ancestors, are in some cases inconvenient, perhaps injurious, in their operation upon us; and the immense labor of finding out what the law originally was, and tracing all its changes and modifications, whether by legislative enactment or judicial construction, through countless volumes of statutes and reports, foreign and domestic, down to the present time, in order to ascertain with precision what the law is, calls loudly for some system of condensation. On the other hand, the danger of unsettling the foundations of this great and goodly fabric, which has been built up by the wisdom and experience of ages, the extreme difficulty of making written rules prospectively to meet all possible cases, and the fear that change may not be amendment, beget a

natural distrust of general codes; and it would be no disparagement to the acknowledged abilities of Mr Livingston, or of any one mind, however gigantic in its grasp, if a production of this character should fail utterly of satisfying public expectation.

Mr Livingston's plan of apportioning the punishment with a nice graduation to the moral character of offences falling under the same general title, is certainly admirable, as far as it is capable of being carried into practical operation. Approximation is of course all that can be attained; and his execution of this part of the task does not strike us as either absurd or unintelligible; although it is one of the fallacious innovations, against which Judge Lewis inveighs. Nor do we think the project of causing the people to be instructed in the provisions of a penal code, by public readings in the schools, as altogether visionary. Nothing, certainly, can be harder in its operation in many cases, than the well known maxim, *Ignorantia legis neminem excusat*, when coupled with the fact, that very slender pains are now taken to supply the means of knowledge to the great mass of the people. Another point in which we dissent wholly from Judge Lewis, is in regard to that article of the code, by which 'the distinction between a favorable and unfavorable construction of laws is abolished,' and 'all penal laws, whatever, are to be construed according to the plain import of their words, taken in their usual sense, and in connexion with the context.' However preferable it might have been to use the more technical terms, *strict* and *liberal*, applied to the construction of statutes, rather than 'favorable' and 'unfavorable,' the substance of the rule here laid down, we have always thought the only true rule of construction upon the principles of common law and common sense. The case, which Judge Lewis cites from Blackstone, of a statute making the stealing of sheep, *or other cattle*, a capital crime, is strongly in point, and so far from supporting his opinion, seems to us directly against it. What man of common sense would say, on reading this statute, that the legislature, by the words, 'or other cattle,' meant absolutely nothing? Yet the judges of England held that the statute, because it was a penal statute, must be construed strictly, and that the words, *or other cattle*, were far too loose to bring any one within the penalty; although, if the same words had been used in a statute of a different character, an ox might have stood as good a chance for its protection as a sheep.

Such certainly was not the intent of the legislature; and what have judges to do with the written law but to carry it into effect, according to its plain meaning?

We find another instance of unsound criticism, according to our views, in the remarks of the learned judge on an article

'of most pernicious tendency,' which says, 'Amendments should be permitted in all cases where neither the accused nor the public prosecutor can be surprised.' The chief ground of cavil is, that 'an amendment might so vary the charge, as to require entire new grounds of defence.' But this surely could not be occasioned by any amendment, which would not operate as a surprise to the accused. Nothing, we apprehend, would surprise a man more than to find himself, when indicted for one crime, about to be tried for another. The mischief now is, that indictments are often quashed for informalities, although the substance of the charge may be apparent enough to common minds; and then the rule, that no man's life shall be twice jeoparded for the same offence, turns an unhung felon loose to prey upon society once more.

But there are one or two serious objections to the proposed code, which are urged upon our notice with great force. We agree with Judge Lewis in thinking, that no innovation can be more pernicious than that of discarding old law terms of settled meaning, and substituting new ones, which have a meaning yet to be found; except, indeed, that of retaining the old terms with new significations attached to them. Both these errors are said to pervade the code throughout; and instances are adduced, which seem to support the charge. The warm advocates of codification, we presume, consider this, however, essential to their scheme; as it is one of their fundamental principles, that the code is to supersede and explode all existing law, and future judges are to look to nothing but the *lex scripta*, which is in itself to define every possible offence, and apportion its exact degree of punishment to each. The *theory* is sublime! Another striking fault, is the many penal provisions for securing the integrity of courts, and guarding against secret corruption; such, for example, as fining a judge in the amount of six months' salary, for receiving a gift of any assignable value, from any person other than a relative. Provisions of this nature would be extremely injurious in their tendency, and destroy all public confidence in the guardians of the law. Judges should be above suspicion of crime, or their usefulness is destroyed. While the offence, which this law contemplates, is secret, no law can reach it. The moment it becomes notorious, 'the lash of public opinion,' and the danger of loss of office and hard earned reputation, are the severest punishments that can be inflicted, and of course afford the most effectual checks.

Of a similar character are those provisions which abolish 'all proceedings against offences heretofore denominated contempts,' and restrict the ability of courts to protect themselves from in-

sult and impertinence within very narrow limits. With only such restraints, the law, in times of turbulence, could never be administered, and courts would become passive instruments of the ruling faction of the day. The remarks of Judge Lewis upon these subjects seem to us sound and powerful. Upon the whole, we would recommend this pamphlet to the attentive consideration of all advocates for new codes; with due allowances, however, for a little illiberal zeal in favor of an excellent thing, the common law, which, like the common blessings of light and air, is not always duly appreciated, because we are not constantly sensible of its effects.

11.—*El Nacional;* a political Journal commenced at Buenos Ayres December 23d, 1824, and continued weekly to the present time. 8vo.

The periodical and newspaper publications of the several South American States are numerous; and, if we may venture to judge of their general character, from the specimens which we have perused, we should say, without reserve, that the liberty of the press is used in those states with an intelligence and discretion, which ensure, better than successful battles or constitutions and laws can do, the lasting continuance of it. There may be, and there doubtless are, instances of licentiousness, which have not reached us, and would not be well understood if they did; for it is a characteristic of scurrility and personal abuse, that they are as confined in their existence as in their aim, seldom being seen or understood far from the time and place of their production. It is an invaluable privilege, to have these moral maps on a large scale, such as newspapers and other periodical works now afford, occasionally spread before us. They enable us to judge of the political and social condition, the manners, customs, passions, and improvements of a people, almost as well at our own firesides, as we could do by dangerous voyages, painful and expensive travel, and personal observation. They introduce us at once to the business and bustle, the interests, affections, and prejudices of a community, however remote in time or place. If any one doubts this position, and calls for proofs, we would send him to a file of our own revolutionary papers; and if he does not become immediately and deeply interested in the changing scenes of '75, he cannot be an American, scarcely a man.

The *Buenos Ayres Nacional* has been the immediate cause of these reflections, and is one of the specimens from the South